

NATIONAL COMPANY LAW TRIBUNAL
GUWAHATI BENCH, GUWAHATI

CP (IB) NO.29/GB/2019

Under Section 7 of the Insolvency & Bankruptcy Code, 2016 read with Rule 4 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

In the matter of:

UCO Bank : ... Financial Creditor

-Versus-

M/s. Rajarshi Motors (P) Ltd. & Ors. : ... Corporate Debtors

Order delivered on 30th August, 2019

Coram:

Hon'ble Mr. Hari Venkata Subba Rao, Member (J)

Hon'ble Mr. Ashutosh Chandra, Member (T)

For the Financial Creditor : Mr. M. Sharma, Advocate

For the Corporate Debtor : Mr. K. Vishwanathan, Advocate
Mr. S. Khound, Advocate

ORDER

This is an application filed by UCO Bank (hereinafter called as "Financial Creditor) against the Corporate Debtor M/s. Rajarshi Motors (P) Ltd. under Section 7 of IBC for initiating Corporate Insolvency Resolution Process against the CD.

2. Brief facts of the application are that the applicant/FC has sanctioned a term loan of Rs.300.00 (Rupees Three hundred lacs only) to the CD on 28-12-2011, cash credit of Rs.2050.00 (Rupees Two thousand Fifty lacs only) 28-12-2011 and bank guarantee of Rs.7.50 (Rupees Seven Fifty lacs only) on 19-04-2014 respectively

against hypothecation of plant & machinery and also against equitable mortgage of plot of land measuring 2.15 acres with construction thereon situated within West Tripura District and also on personal guarantee of its directors. As the CD committed default in repaying the debt, the loan account has been classified as NPA. The FC initiated recovery proceedings by filing Original Application bearing No.73 of 2017 against the CD on the file of the Hon'ble Debt Recovery Tribunal at Guwahati and the same is pending. As the CD has committed default in repaying the debt, the above application has been filed by the FC for initiating corporate insolvency resolution process.

3. The CD filed reply affidavit opposing the above company petition with all general denials and also disputing the quantum of debt claimed by the FC in the above application. The CD mainly contends that the claim is barred by limitation.

4. Heard both sides and perused the record. The learned advocate appearing for the CD, Mr. K. Vishwanathan during the course of the final hearing fairly conceded that even though they have taken several pleas in the written statement, they are confining their argument only with regard to limitation aspect.

5. It is the contention of the CD that the acknowledgment of debt was executed by the CD on 28-08-2015 and the above application being filed on 11-12-2018 is not within three years from the date of last acknowledgment of debt and, therefore, the above petition is barred by limitation. It is his further contention that an acknowledgment of debt is only a mere admission of liability and it does not create any further cause of action to the FC as per the law laid down by various Courts in the following decisions:

- i) (1962) 1 SCR 140: AIR 1961 SC 1236 – Khan Bahadur Shapoor Freedom Mazda –Vs– Durga Prasad Chamaria & Ors.
- ii) 1973 SCC Online Cal 93: AIR 1974 Cal 170 – Palam Tea Co. Ltd.

- iii) 2005 (1) CTC - 401 (OP No.935 of 2000 & Application No.5469 of 2000 dated 07-01-2005) - Tamil Nadu State Construction Corporation Ltd. -Vs- M/s. Gardner Landscape Pvt. Ltd.

6. Let us examine the above issue. Before examining the above issue it is important to mention here that the FC in this case has also filed an additional affidavit along with certain documents especially balance sheet of the CD Company dated 31st March, 2018, in which the CD has admitted the liability of the UCO Bank. Therefore, it is very clear from the above balance sheet that the CD has made an admission about the liability of the FC in their balance sheet dated 31-03-2018, which is also an admission of liability even according to the argument of the advocate appearing for the CD and, therefore, the above application being filed on 11-12-2018 is well within the limitation.

7. Even otherwise, it is an admitted fact on both sides that the FC has initiated recovery proceedings before the Debt Recovery Tribunal in 2017 and the same is reserved for orders which itself speaks that the bank has initiated legal action against the CD for recovery of its dues well within the limitation period. The remedy of filing the above application before the NCLT is in addition an additional remedy available to the bank as law does not prohibit the bank from proceeding both under IBC and RDDB Act or NPA Act and the "doctrine of election" is not applicable. As stated above, the loan facilities are not mere unsecured debts and are covered by mortgage of immovable properties belonging to the CD Company against which the charge of the FC was recorded in the ROC records.

Recently, the Hon'ble NCLAT in Babulal Vardhaje Gurjar Vs. Veer Gurjar Aluminium Industries Pvt. Ltd. & Ors. vide its order dated 14-05-2019 after referring case law laid down by the Hon'ble Supreme Court in B. K. Educational Services Ltd. Vs. Parag Gupta & Associates held that the period of limitation for claiming a debt covered by security of mortgage properties is twelve years. Therefore, a Financial

Creditor can file a company petition under Section 7 of IBC as long as his right to recover the amount and his right to sue is not barred by limitation.

This is also very clear from specific Article 62 of the Limitation Act which provides a limitation of twelve years to enforce payment of money secured by a mortgage or otherwise charged upon immovable property and the time of period of limitation would begin to run when the money becomes due. Even though, the proceedings under IBC are resolution in nature, the object is recovery. The remedy of the bank to recover their dues is not barred by limitation even as on date. Therefore, the above contention raised by the CD with regard to the plea of limitation has no legal force and is liable to be rejected. As already stated above, the CD did not seriously press for any other issues except the plea of limitation.

As far as the above case law relied upon by the CD are concerned, all the above decisions relied upon by the CD are distinguishable from the facts of the present case on hand and they are not applicable.

8. Coming to the part of availment of loan and default by the CD, it is seen that the CD did not dispute the availment of loan anywhere in the affidavit in reply. Thus, it is very clear from the above facts and circumstances and the conduct of the CD and the loan documents including statement of account filed by the FC proves that the CD has committed default.

9. This Adjudicating Authority having satisfied itself with the fact that the Corporate Debtor defaulted in making payment towards the liability to the petitioner, the company petition deserves to be admitted.

10. This Adjudicating Authority on perusal of the documents filed by the Creditor, is of the view that the Corporate Debtor defaulted in repaying the loan. The Financial Creditor also furnished the name of the Insolvency Resolution Professional to act as

Interim Resolution Professional and there being no disciplinary proceeding pending against him, the application under Sub-section (2) of Section 7 of the Code is taken as complete and accordingly this Bench hereby admits the company petition by passing the following:

ORDER

- (i) *The petition filed by the Financial Creditor under Section 7 of the Insolvency & Bankruptcy Code, 2016 is hereby admitted for initiating Corporate Insolvency Resolution Process in respect of M/s. Rajarshi Motors (P) Ltd.*
- (ii) *We hereby declare a Moratorium and public announcement in accordance with Sections 13 and 15 of the IBC, 2016.*
- (iii) *The moratorium is declared for the purposes referred to in Section 14 of the Insolvency & Bankruptcy Code, 2016. The IRP shall cause a public announcement of the initiation of Corporate Insolvency Resolution Process and call for the submission of claims under Section 15. The public announcement referred to in clause (b) of sub-section (1) of Section 15 of the Insolvency & Bankruptcy Code, 2016 shall be made immediately.*
- (iv) *Moratorium under Section 14 of the Insolvency & Bankruptcy Code, 2016 prohibits the following:*
 - a) *The institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;*
 - b) *Transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;*

- c) *Any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002);*
- d) *The recovery of any property by an owner or lessor where such property is occupied by or in possession of the corporate debtor.*
- (v) *The supply of essential goods or services to the Corporate Debtor as may be specified shall not be terminated or suspended or interrupted during the moratorium period.*
- (vi) *The provisions of sub-section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.*
- (vii) *The order of moratorium shall have effect from the date of admission till the completion of the Corporate Insolvency Resolution Process.*
- (viii) *Provided that where at any time during the corporate insolvency resolution process period, if the Adjudicating Authority approves the resolution plan under sub-section (1) of Sec.31 or passes an order for liquidation of corporate debtor under Sec.33, the moratorium shall cease to have effect from the date of such approval or liquidation order, as the case may be.*
- ix) *Necessary public announcement as per Section 15 of the IBC, 2016 may be made.*
- (x) *Mr. Aditya Kumar Tibrewal, an Insolvency Resolution Professional, 7C, Kiran Shankar Roy Road, Hasting Chamber, Kolkata - 700001, Registration No.IBBI/IPA-001/IP-P00743/2017-2018/12249, Ph. 9831051818, Email:adityatibrewal@gmail.com is hereby appointed as*

Interim Resolution Professional for ascertaining the particulars of creditors and convening a meeting of Committee of Creditors for evolving a resolution plan.

- (xi) *The Interim Resolution Professional should convene a meeting of the Committee of Creditors and submit the resolution passed by the Committee of Creditors and shall identify the prospective Resolution Applicant as per rules.*
- (xii) *Registry is hereby directed under Section 7(7) (a) of the I.B. Code, 2016 to communicate the order to the Financial Creditor, the Corporate Debtor and to the Interim Resolution Professional by Speed Post as well as through e-mail.*
- (xiii) *The Interim Resolution professional is directed to strictly comply with the model timeline for CIRP as provided under Regulation 40A of IBBI (IRP for Corporate Person) Regulation, 2016.*

11. Certified copy of the order may be issued to all the concerned parties, if applied for, upon compliance with all requisite formalities.

Member (Technical)
Adjudicating Authority

Member (Judicial)
Adjudicating Authority

Dated, Guwahati the 30th day of August, 2019.
//DeKa/30-08-2019//

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For the Financial Creditor : Mr. M. Sharma, Advocate
Ms. J. Choudhury, Advocate

For the Corporate Debtor : Mr. K. Vishwanathan, Advocate
Mr. S. Khound, Advocate

ORDER

Order pronounced vide separate order.

2. In the result, company petition in CP (IB) NO.29/GB/2019 is allowed and Mr. Aditya Kumar Tibrewal is appointed as Interim Resolution Professional (IRP).

Member (Technical)
Adjudicating Authority

Member (Judicial)
Adjudicating Authority

Dated, Guwahati the 30th day of August, 2019.

//DeKa/30-08-2019//